



## **Judicial Selection Commission – THE JUDICIARY · STATE OF HAWAII**

417 SOUTH KING STREET · HONOLULU, HAWAII 96813-2897 · TELEPHONE (808) 538-5200 · FAX (808) 538-5205

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Susan M. Ichinose, Chair  
George M. Masuoka Vice Chair  
Albert Y. Kanno, Secretary

Annelle C. Amaral  
James J. Bickerton  
Frederick T. Okumura  
Jeffrey S. Portnoy  
Thomas R. Waters

### **JUDICIAL SELECTION COMMISSION PRESS RELEASE**

FOR IMMEDIATE RELEASE: November 16, 2011

Following the election of its new Chair, Susan Ichinose, in June 2011, the Judicial Selection Commission (“JSC”) has held a series of meetings to discuss and review all of its rules and procedures. Such a regular review and updating is required by existing JSC Rule 6.C.

The JSC is governed by Article IV of the State Constitution which requires that all of its “deliberations” be confidential. Within that constraint, the JSC is committed to increasing the transparency of its activities to the extent permitted by the law and consistent with its goal of choosing the best possible nominees from the broadest and most diverse pool of candidates it can obtain.

Until now, JSC rules have prohibited the JSC from sharing statistical information about its processes, such as the general information about the total number of applicants or the breakdown of applicants and nominees by gender, experience or other attributes that may be of interest to the public, or information about trends such as increases or decreases in the number of applicants. Since the rules were first adopted in 1979, they have prohibited the JSC from disclosing its main work product – the names of the nominees on the lists presented to the Governor and Chief Justice as appointing authorities.

The Commission’s review and research over the past six months have determined that the above restrictions are broader than the State Constitution requires, and the policies that may have been served by the more restrictive rules when they were adopted decades ago have given way to new policies and priorities. Accordingly, the JSC has, effective November 15, 2011, amended its Rules to remove the above noted restrictions.

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Under its revised Rules, the JSC will now release the names of the nominees transmitted to the Governor or Chief Justice at the time they are transmitted and will be permitted to disclose statistical and historical information that summarizes patterns and trends in judicial selection. The JSC will continue to keep confidential information it receives pertaining to individual applicants and petitioners for retention, and information pertaining to communications among and votes by Commissioners, as it has concluded that such information falls within the “deliberations” that the Hawai‘i Constitution requires to be confidential. However, the JSC believes that the judicial selection process will be strengthened by the new rules because the work product of the JSC will now be more easily accessible and more readily evaluated by the public.

A copy of the rules, as revised, is attached.

# **JUDICIAL SELECTION COMMISSION RULES**

**Published by the Supreme Court  
of the State of Hawai‘i  
for the Judicial Selection Commission**

**Adopted by the Commission April 23, 1979  
With Amendments as Noted  
pursuant to Article VI, Section 4 of the  
Hawai‘i State Constitution**

**The Judiciary  
State of Hawai‘i**

# **JUDICIAL SELECTION COMMISSION RULES**

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## **PREAMBLE**

Judicial selection commissioners hold positions of public trust and shall conduct themselves in a manner which reflects credit upon the judicial selection process.

### **Rule 1. COMMISSION CHAIRPERSON.**

The chairperson of the commission shall adhere to the Rules for the Judicial Selection Commission and shall preside at any meeting of the commission at which he or she is present.

### **Rule 2. COMMISSION VICE-CHAIRPERSON.**

In the event that the chairperson is an attorney, the vice-chairperson shall be a lay member of the commission. If the chairperson is not an attorney, the vice-chairperson shall be an attorney. The vice-chairperson shall serve in the absence of the chairperson.

### **Rule 3. COMMISSION SECRETARY.**

The commission shall choose one of its members as secretary. It shall be the duty of the secretary to prepare and keep the minutes of all meetings. In the secretary's absence, the commission shall choose a member to be acting secretary. The duties may be delegated to a staff member.

### **Rule 4. TERMS OF OFFICE.**

The terms of office of the chairperson, vice-chairperson and secretary shall be for two years, with the initial terms of office beginning April 1, 1979.

### **Rule 5. CODE OF CONDUCT FOR COMMISSION MEMBERS.**

#### **SECTION ONE: ABUSE OF POSITION**

**A.** No commissioner shall use or attempt to use his or her official position to secure privileges or exemptions for the commissioner or others.

**B.** No commissioner shall attempt, solicit, or agree to accept any gift, favor or anything of value based upon any understanding, either explicit or implicit, that the official actions, decisions or judgment of any commissioner would be influenced thereby. Nothing in this section shall prohibit a commissioner from accepting a public award presented in recognition of public service.

**C.** No commissioner shall request or accept any fee or compensation, on commission related matters.

**D.** Each commissioner shall use the resources, property and funds under the commissioner's official control judiciously and solely in accordance with prescribed statutory and regulatory procedures.

**E.** Each commissioner shall immediately report to the Judicial Selection Commission any attempt to induce him or her to violate any of the standards set out above.

#### **SECTION TWO: CONFIDENTIALITY**

**A.** Under the Constitution of the State of Hawai'i, the commission's deliberations must be confidential. Therefore, except as otherwise provided in these rules, the following information shall not be disclosed outside of any commission meeting: information relating to the identity of any applicant; information received from or about applicants and petitioners; and any communications among or votes by commissioners on any subject. *(Amended and effective 11/15/11)*

**B.** This mandate of confidentiality survives commissioners' terms of office and must be observed in perpetuity. *(Amended and effective 11/15/11)*

**C.** The commission shall release lists of its nominees for judicial office concurrent with its submission of each list to the appointing authority. *(Amended and effective 11/15/11)*

### **SECTION THREE: CONFLICT OF INTEREST**

**A.** Every commissioner shall avoid conflicts of interest, in the performance of commission duties. Every commissioner is required to exercise diligence in becoming aware of conflicts of interest, and disclosing any conflicts to the Judicial Selection Commission. If a commissioner knows of any personal, business, or legal relationship as a party or attorney which the commissioner had with the applicant or petitioner, the commissioner must report this fact to the commission. The commission shall then decide the extent to which the involved commissioner shall participate in the proceedings concerning said applicant or petitioner. In the event that a commissioner does not vote, the fact that a commissioner did not vote may be announced publicly. The commission may disclose its decision on this issue.

**B.** No commissioner shall participate in any retention proceeding regarding a judge or justice who has a petition for retention pending before the commission pursuant to Rule 12 if that commissioner has a substantive matter pending before that judge or justice.

**C.** No commissioner shall take an active part in political management or in political campaigns.

**D.** A commissioner shall consider each applicant and petitioner for a judicial office in an impartial, objective manner. No commissioner shall discriminate on the basis of nor manifest, by words or conduct, bias or prejudice based on race, religion, sex, national origin, gender, marital status, sexual orientation or political affiliation in the conduct of the business of the commission.

### **Rule 6. COMMISSION MEETINGS.**

**A.** Meetings of the commission may be called by the chairperson or a majority of the members by written notice to the other members specifying the time and place of meeting. Such notice shall be mailed or sent at least seven days before the time specified, except that a meeting may be held on shorter notice if the notice specifies that the meeting will be an emergency meeting. Notice of meeting may be waived by any commissioner either before or after the meeting takes place; and attendance at a meeting by any member shall constitute a waiver of notice by such member unless he or she shall, at or promptly after the beginning of such meeting, object to the holding of the meeting on the ground of lack of, or insufficiency of, notice.

**B.** Meetings of the commission may be held without notice at any time or place whenever the meeting is one as to which notice is waived by all members or whenever the commission at a previous meeting shall have designated the time and place for such a meeting.

**C.** The chairperson shall call at least one meeting each year for the principal purpose of reviewing and/or amending commission rules and operating procedures and briefing new commissioners on the rules and operating procedures.

**D.** A quorum for the commission shall be five commissioners. The commission shall act by majority vote of all commissioners in all actions.

### **Rule 7. RECRUITMENT OF APPLICANTS, NOTICE.**

**A.** Commissioners may actively seek out and encourage qualified individuals to apply for judicial office. Commissioners should always keep in mind that often persons with the highest qualifications will not actively seek judicial appointment.

**B.** Upon notification or knowledge that a vacancy has occurred or will occur, the chairperson shall inform the other members of the commission of the vacancy. The commission may publicize a vacancy.

### **Rule 8. APPLICATIONS AND PRELIMINARY SCREENING OF APPLICANTS.**

**A.** Applicants who meet the constitutional qualifications for appointment shall receive and respond to forms of applications as prescribed by the commission.

**B.** The commission may after it receives the applications eliminate from further consideration those applicants whom it evaluates to be unqualified for judicial office. A list of the remaining applicants may be prepared and the commission may gather additional information on each applicant as it deems appropriate.

**C.** The chairperson may designate one or more commissioners to review the qualifications of the applicants whose names appear on the list of remaining applicants prepared pursuant to Rule 8B. The designated commissioner or commissioners shall prepare a list recommending the names of applicants whom the commission should interview, the names of applicants who should not be further considered by the commission, and the names of applicants the commission should further consider for judicial office.

#### **Rule 9. INTERVIEWS AND INVESTIGATIONS.**

The commission may interview applicants and petitioners and conduct investigations into their backgrounds and qualifications. The chairperson may designate one or more commissioners to interview and investigate applicants and petitioners. Using the commission's form of application or petition, or as the case may be, as a starting point, the designees may obtain as much information on the applicant or petitioner as possible from available sources. The commission may retain such services as it deems necessary and appropriate to conduct investigations.

#### **Rule 10. EVALUATION OF APPLICANTS AND PETITIONERS.**

**A.** The commission shall consider each applicant's and petitioner's background, professional skills and character, and may give consideration to the following qualities:

- (1) integrity and moral courage
- (2) legal ability and experience
- (3) intelligence and wisdom
- (4) compassion and fairness
- (5) diligence and decisiveness
- (6) judicial temperament
- (7) such other qualities that the commission deems appropriate.

#### **Rule 11. SELECTION OF NOMINEES.**

**A.** Oral or written reports on the investigations and interviews conducted pursuant to Rule 9 shall be made to the commission. Thereafter, the chairperson shall open the meeting to a discussion of each applicant's qualifications for judicial office.

**B.** When the commission has completed its evaluation of applications for a judicial office, it shall meet for the purpose of selecting not less than four, and not more than six nominees for a vacancy in the office of chief justice, supreme court, intermediate appellate court and circuit courts. The commission shall select not less than six nominees for a vacancy in the district courts. *(Amended and effective 6/25/09)*

**C.** The commission members shall vote by secret ballot. Each member shall vote to select the number of qualified nominees for any given judicial office vacancy required under Rule 11B. In the event that the initial ballot produces less than the stipulated number of nominees, voting shall continue for the remaining nominee positions; provided, however, that each nominee must have been selected by a majority vote of nine commissioners. An applicant's name may be included on more than one list of nominees for different judicial office vacancies. The names of the nominees selected by the commission shall be transmitted pursuant to Rule 13.

*(Amended and effective 6/25/09)*

#### **Rule 12. RETENTION OF PETITIONERS.**

**A.** When a judge or justice petitions the commission pursuant to Section 3 of Article VI of the Constitution of the State of Hawai'i to be retained in office, the commission shall promptly upon receipt of such petition commence an investigation into qualifications of the petitioner for continued judicial

office. Every petitioner shall complete forms prescribed by the commission. The petitioner, by giving notice to the commission, may withdraw the petition for retention before the issuance of an order by the commission under Rule 12F.

The commission shall publicize the fact that the judge or justice has petitioned for retention in such manner as it deems appropriate to the need that all persons who might have an interest in the subject matter be given an opportunity to submit their views.

**B.** At any meeting of the commission held for the purpose of considering a petition filed pursuant to this rule, the chairperson or acting chairperson may administer oaths and affirmations to any person testifying at such meeting.

**C.** The commission may compel by subpoena the attendance of witnesses by hearings under this rule and the production of pertinent books, papers and documents. Writs of subpoena shall be signed by the chair or acting chair and attested to by the secretary or acting secretary. The circuit court of any circuit in which a subpoena is served or in which the attendance is required may, upon proper application, enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Subpoena and witness fees and mileage shall be the same as in civil cases in the circuit courts.

**D.** The commission shall interview the petitioner and may hold hearings which, at the discretion of the commission, may be either opened or closed to the public and which interested parties may testify before the commission.

**E.** The commission shall make a determination that the petitioner should or should not be retained in office, and the commission shall attempt to make its decision within thirty days prior to the expiration of the petitioner's then current term of office. Voting by the commissioners on the question of the granting or denial of the petition shall be by secret ballot. The term of a petitioner may not be extended except by a majority vote of the commissioners as provided by Rule 6D.

**F.** The commission shall issue an order upon making a determination that the petitioner should or should not be retained in office. The order shall renew the term of office of the petitioner for the period provided by law if the determination is that the petitioner should be retained in office. The order shall state that the petition has been denied if the determination is that the petitioner should not be retained in office.

### **Rule 13. TRANSMITTAL TO THE APPOINTING AUTHORITY.**

**A.** The names of the nominees, listed in alphabetical order, shall be hand-delivered to the appointing authority.

**B.** No other information shall be forwarded to the appointing authority, except that the commission may submit to the appointing authority a factual summary of the nominee's background based on material provided by the nominees, and the commission may consult with the appointing authority on request.

### **APPENDIX THE CONSTITUTION OF THE STATE OF HAWAI'I, as amended and in force July 1, 2004**

#### **[ARTICLE VI]**

### **APPOINTMENT OF JUSTICES AND JUDGES.**

SECTION 3. The governor, with the consent of the senate shall fill a vacancy in the office of the chief justice, supreme court, intermediate appellate court and circuit courts, by appointing a person from a list of not less than four, and not more than six nominees for the vacancy, presented to the governor by the judicial selection commission.

If the governor fails to make any appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. If the senate fails to reject any appointment within thirty days thereof, it shall be deemed to have given its consent to such appointment. If the senate

shall reject any appointment, the governor shall make another appointment from the list within ten days thereof. The same appointment and consent procedure shall be followed until a valid appointment has been made, or failing this, the commission shall make the appointment from the list, without senate consent.

The chief justice, with the consent of the senate, shall fill a vacancy in the district courts by appointing a person from a list of not less than six nominees for the vacancy presented by the judicial commission. If the chief justice fails to make the appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. The senate must hold a public hearing and vote on each appointment within thirty days of any appointment. If the senate fails to do so, the nomination shall be returned to the commission and the commission shall make the appointment from the list without senate consent. The chief justice shall appoint *per diem* district court judges as provided by law.

#### **QUALIFICATIONS FOR APPOINTMENT.**

Justices and judges shall be residents and citizens of the State and of the United States, and licensed to practice law by the supreme court. A justice of the supreme court, a judge of the intermediate appellate court and a judge of the circuit court shall have been so licensed for a period of not less than ten years preceding nomination. A judge of the district court shall have been so licensed for a period of not less than five years preceding nomination.

No justice or judge shall, during the term or office, engage in the practice of law, or run for or hold any other office or position of profit under the United States, the State or its political subdivisions.

#### **TENURE; COMPENSATION; RETIREMENT.**

The term of office of justices and judges of the supreme court, intermediate appellate court and circuit courts shall be ten years. Judges of district courts shall hold office for the periods as provided by law. At least six months prior to the expiration of a justice's or judge's term of office, every justice and judge shall petition the judicial selection commission to be retained in office or shall inform the commission of an intention to retire. If the judicial selection commission determines that the justice or judge should be retained in office, the commission shall renew the term of office of such justice or judge for the period provided by this section or by law.

There shall be a salary commission to review and recommend salaries for justices and judges of all state courts. Justices and judges shall have salaries as provided by law. Their compensation shall not be decreased during their respective terms of office, unless by general law applying to all salaried officers of the State. They shall be retired upon attaining the age of seventy years. They shall be included in any retirement law of the State.

*(Am Const Con 1968 and election Nov 5, 1968; ren and am Const Con 1978 and election Nov 7, 1978; am SB 2182 (1994) and SB 2294 (1994) and election Nov 8, 1994.)*

#### **JUDICIAL SELECTION COMMISSION.**

SECTION 4. There shall be a judicial selection commission that shall consist of nine members. The governor shall appoint two members to the commission. No more than one of the two members shall be a licensed attorney. The president of the senate and the speaker of the house of representatives shall each respectively appoint two members to the commission. The chief justice of the supreme court shall appoint one member to the commission. Members in good standing of the bar of the State shall elect two of their number to the commission in an election conducted by the supreme court or its delegate. No more than four members of the commission shall be licensed attorneys. At all times, at least one member of the commission shall be a resident of a county other than the City and County of Honolulu.

The commission shall be selected and shall operate in a wholly non-partisan manner. After the initial formation of the commission, elections and appointments to the commission shall be for staggered terms of six years each. Notwithstanding the foregoing, no member of the commission shall serve for more than six years on the commission.

Each member of the judicial selection commission shall be a resident of the State and a citizen of the United States. No member shall run for or hold any other elected office under the United States, the State

or its political subdivisions. No member shall take an active part in political management or in political campaigns. No member shall be eligible for appointment to judicial office of the State so long as the person is a member of the judicial commission and for a period of three years thereafter.

No act of the judicial selection commission shall be valid except by concurrence of the majority of its voting members.

The judicial selection commission shall select one of its members to serve as chairperson. The commission shall adopt rules which shall have the force and effect of law. The deliberations of the commission shall be confidential.

The legislature shall provide for the staff and operating expenses of the judicial selection commission in a separate budget. No member of the judicial selection commission shall receive any compensation for commission services, but shall be allowed necessary expenses for travel, board and lodging incurred in the performance of commission duties.

The judicial selection commission shall be attached to the judiciary branch of the state government for purposes of administration.

*(Add Const Con 1978 and election Nov 7, 1978; am SB 2513 (1994) and SB 2515 (1994) and election Nov 8, 1994.)*